

I.S.G. Extrusion Toolings, Inc. and Local Lodge No. 82, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 7-CA-19690

June 11, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

Upon a charge filed on August 17, 1981, by Local Lodge No. 82, International Association of Machinists and Aerospace Workers, AFL-CIO (Union), and duly served on I.S.G. Extrusion Toolings, Inc. (Respondent), the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 7, issue a complaint on September 30, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1), 8(d), and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that since on or about June 29, 1981, Respondent has refused to bargain collectively with the Union as the exclusive bargaining representative of certain of its employees by unilaterally, and without prior notice to the Union, breaching its most recent bargaining agreement with the Union. The breach has been manifested by Respondent's refusal and failure to make supplemental unemployment benefit (SUB) payments as mandated by the bargaining agreement. The present controversy concerns only Respondent's production and maintenance employees at its Troy, Michigan, facility. On October 10, 1981,¹ Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

Thereafter, on December 15, counsel for the General Counsel filed directly with the Board his "Motions to Transfer Case to the Board and for Judgment on the Pleadings." On December 21, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Judgment on the Pleadings should not be granted and thereafter Respondent filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Judgment on the Pleadings

In paragraph 11 of its answer, Respondent admits that it has refused, and continues to refuse, to bargain collectively with the Union as the exclusive bargaining representative of certain of its employees by unilaterally, and without prior notice to the Union, breaching the terms of its bargaining agreement with the Union by refusing to make SUB payments to its eligible employees. Nevertheless, Respondent denies those portions of the complaint that charged that, by the above conduct, Respondent has violated Sections 8(a)(5) and (1) and 8(d) of the Act. In its answer, Respondent sets up as its sole defense its filing, on June 29, of a petition in bankruptcy under chapter XI of the United States Bankruptcy Act, and avers that, by filing the petition, it is precluded "by operation of law" from complying with the terms of its bargaining agreement with the Union.

In response to the Board's Notice To Show Cause, Respondent further alleges that its Troy, Michigan, facility was closed and that its employees were terminated in early June 1981. Subsequently, Respondent filed a chapter XI petition for relief and for the appointment of a debtor-in-possession. Respondent contends that its petition for reorganization was precipitated by the default in its loan agreement with its secured lender, Northwest Acceptance Corporation, not by an intent to evade liability to its employees. Additionally, Respondent alleges that, on June 29, the Honorable George Brody, United States Bankruptcy Court for the Eastern District of Michigan, appointed Robert Scarnecchia, Respondent's vice president of finance, as debtor-in-possession for Respondent. Respondent contends that the bankruptcy court order precludes the payment of any pre-bankruptcy petition debt or obligation by the debtor-in-possession without the specific authorization of the bankruptcy court. Since the obligation to make SUB payments arose prior to the filing of its chapter XI petition, Respondent contends that forced payment of such a debt by the debtor-in-possession would be in derogation of the bankruptcy court order. Respondent avers that, because the Bankruptcy Code alters and modifies the contract, its good-faith compliance with the Bankruptcy Code alters its outstanding obligations under its bargaining agreement with the Union.

¹ All dates are in 1981 unless indicated otherwise.

It is clear from the pleadings, including Respondent's answer and the response to the Notice To Show Cause, that there are no factual issues outstanding. Hence, we find that there is no triable issue requiring a hearing and, for the following reasons, we grant the General Counsel's Motion for Judgment on the Pleadings.

The General Counsel argues that Respondent's asserted defense to the unfair labor practice charges has no merit; the General Counsel claims that the mere filing of a petition in bankruptcy does not relieve Respondent of its obligation under the bargaining agreement. Board law supports the General Counsel's contention that bargaining agreements remain effective and binding, notwithstanding the appointment of a debtor-in-possession.² We have held that an employer is not relieved of its obligation to bargain over the effects of its decision to terminate operations merely because it has become a debtor-in-possession under the Bankruptcy Act, even if it believes itself to be financially unable to meet the Union's bargaining demands.³ In any event, the Board is not deprived of its jurisdiction or authority to process an unfair labor practice complaint to final disposition upon the adjudication of a respondent as a bankrupt.⁴ Accordingly, we grant the Motion for Judgment on the Pleadings.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

I.S.G. Extrusion Toolings, Inc., has been a Michigan corporation with its principal office and place of business in Troy, Michigan, where it is engaged in the manufacture of tools for ferrous and nonferrous extrusion industries. During the fiscal year ending December 31, 1980, a representative period, Respondent, in the course and conduct of its business as described above, purchased and caused to be transported and delivered to its Troy, Michigan, plant goods and materials valued in excess of \$100,000, of which goods and materials valued in excess of \$50,000 were transported and

delivered to its plant in Troy, Michigan, directly from points located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Local Lodge No. 82, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The record reveals that since on or about July 2, 1979, and continuing to date, the Union has been the exclusive bargaining representative for purposes of collective bargaining for certain of Respondent's employees at Respondent's Troy, Michigan, facility. It further reveals that Respondent and the Union were parties to a bargaining agreement, effective from July 10, 1979, through July 9, 1981, covering these employees. The bargaining agreement provides for the provision of SUB payments for up to 1 year to eligible employees of Respondent who are on layoff due to a reduction in force or as a result of a permanent shutdown of Respondent's plant. However, since on or about June 29, 1981, Respondent has refused to make SUB payments to its eligible employees. Based on the above, we find that commencing on June 29, 1981, and continuing at all times thereafter to date, Respondent has breached its bargaining agreement with the Union by refusing and failing to make SUB payments to its eligible employees. By failing and refusing to do so, Respondent has acted, and is acting, in derogation of its statutory obligation under Section 8(d), and therefore has violated, and is violating, Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

² See *Jersey Juniors, Inc.*, 230 NLRB 329, 332 (1977). See also *Truck Drivers Local Union No. 807, International Brotherhood of Teamsters v. The Bohack Corporation*, 541 F.2d 312, 320 (2d Cir. 1976), cert. denied 439 U.S. 825 (1978) (nothing that the Bankruptcy Act does not permit a debtor-in-possession to disregard obligations imposed by the Act.) Accord: *Shopmen's Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO v. Kevin Steel Products, Inc.*, 519 F.2d 698, 706 (2d Cir. 1975).

³ *Burmeyer Bros., Inc.*, 254 NLRB 1027 (1981), and cases cited at fn. 6 therein.

⁴ *M & M Transportation Co., Inc., Employer and Debtor-in-Possession, a subsidiary of Qualpeco Services, Inc.*, 239 NLRB 73, 75 (1978); *W.T. Grant Regional Credit Center*, 225 NLRB 881, fn. 1 (1976).

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we have found that Respondent has refused and continues to refuse to bargain collectively with the Union, as the exclusive bargaining representative of certain of Respondent's employees,⁵ by breaching its bargaining agreement with the Union. The breach has been manifested by Respondent's refusal and failure to make SUB payments to its eligible employees. We shall therefore order that Respondent make whole the employees in the appropriate unit by making all SUB payments, as provided in its current bargaining agreement with the Union. Respondent and its debtor-in-possession will be required to preserve and, upon request, make available to authorized agents of the Board all records necessary or useful in determining compliance with the Order.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. I.S.G. Extrusion Toolings, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Lodge No. 82, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has refused since on or about June 29, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of Respondent's employees in an appropriate unit by unilaterally, and without prior notice to the Union, breaching the terms of its most recent bargaining agreement with the Union. The breach has been manifested by Respondent's refusal and failure to make SUB payments to its eligible employees. In so doing, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

4. By the aforesaid acts, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in

Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, I.S.G. Extrusion Toolings, Inc., Troy, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally, and without prior notice to the Union, breaching the terms of its current bargaining agreement with the Union by refusing and failing to make SUB payments to eligible employees of Respondent.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Pay all eligible employees the retroactive SUB payments at the rates that they would have received but for Respondent's unfair labor practices, such payment to continue henceforth for the term delineated in its bargaining agreement with the Union. Interest on all such sums shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See also *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Post at its plant located in Troy, Michigan, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material. Alternatively, in the event that Respondent has terminated its employees at its plant in Troy, Michigan, it shall mail a copy of the attached notice marked "Appendix" to each employee in the appropriate unit who was

⁵ All full-time and regular part-time production and maintenance employees employed by Respondent at its facility located at 1387 Piedmont, Troy, Michigan, constitute an appropriate unit for collective-bargaining purposes. The aforesaid unit excludes office clerical employees, professional employees, guards and supervisors as defined in the Act.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employed by Respondent at such plant immediately prior to the cessation of its operations.⁷

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁷ In its response to the Notice To Show Cause, Respondent alleges that its Troy, Michigan, facility was closed and that its employees were terminated in early June 1981. The General Counsel has neither confirmed nor denied this assertion and it is impossible to ascertain from the record the current status of Respondent's employees and operations. We therefore include an alternative provision for the mailing of copies of the notice, in the event that a shutdown has been effectuated, so as to ensure the receipt of notice by Respondent's eligible employees.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT unilaterally, and without prior notice to Local Lodge No. 82, International Association of Machinists and Aero-

space Workers, AFL-CIO, breach the terms of our most recent bargaining agreement with the Union by refusing and failing to make supplemental unemployment benefit (SUB) payments to our eligible employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL pay all eligible employees the retroactive supplemental unemployment benefit payments, with interest, at the rates that they would have received but for our unfair labor practices, such payments to continue henceforth for the term delineated in our bargaining agreement with the Union.

I.S.G. EXTRUSION TOOLINGS, INC.